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January 4, 2019

VIA ECF

Hon. Katharine H. Parker
United States Magistrate Judge
Southern District of New York
500 Pearl Street
New York, New York 10007

Re: *Daniel Kleeberg, Lisa Stein and Audrey Hays v. Lester Eber, et al.*
Civ. Action No.: 16-cv-09517-LAK-KHP

Dear Magistrate Parker:

As you know, we represent the Eber Defendants in the above-referenced matter. During the December 19, 2018 Scheduling Conference, the Court granted the Eber Defendants the opportunity to file a sur-reply relating to plaintiffs' motion for permission to file a Third Amended Complaint by January 4, 2019 if they deemed it necessary. The Eber Defendants believe that the filings to date provide the Court with sufficient information to render a decision on plaintiffs' motion. Accordingly, the Eber Defendants will refrain from burdening the Court with a sur-reply memorandum of law.

However, we would note that one of the primary arguments that plaintiffs make in their reply papers is that many of the time-barred or otherwise futile claims in the proposed Third Amended Complaint highlighted by the Eber Defendants are already in the Second Amended Complaint. To the extent plaintiffs are alleging that the Eber Defendants have waived any such defenses with respect to those claims, such an allegation is incorrect. The Eber Defendants have always intended to pursue such defenses via affirmative defenses, summary judgment or otherwise. They were raised in opposition to plaintiffs' present motion because they highlight the futility of many of the claims made by plaintiffs in the proposed Third Amended Complaint – as well as in previous iterations of the Complaint.

Thank you for your attention to this matter.

Respectfully submitted,

Paul F. Keneally

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cc: Brian Brook, Esq. (via ECF)
Robert Calihan, Esq. (via ECF)
Colin D. Ramsey, Esq. (via ECF)